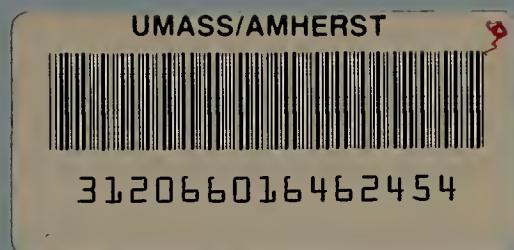


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CLEAN STATE INITIATIVE

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**1998 Report to the Governor
and the Legislature
on State Agency and
Authority Compliance
with the Environmental Laws**



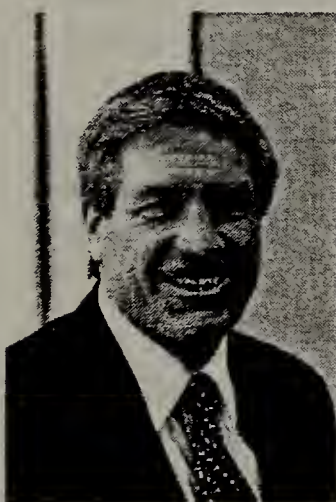
***Attorney General Scott Harshbarger
Commonwealth of Massachusetts***

July 1998

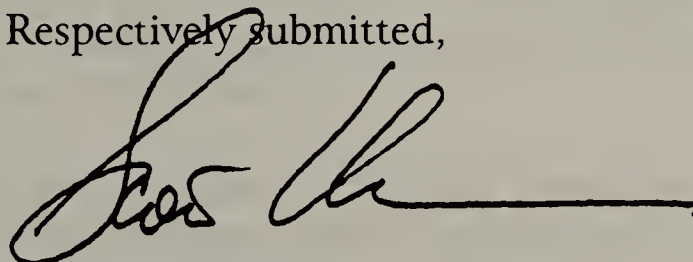
1998 Report to the Governor and the Legislature on State Agency and Authority Compliance with the Environmental Laws

*To His Honor the Acting Governor and the Honorable General Court of the
Commonwealth of Massachusetts:*

Pursuant to my authority under G.L. c. 12, §11D, I respectfully submit this third report on the Clean State Initiative ("Clean State"), a program to bring state agencies and authorities into compliance with the environmental laws. Clean State was created through the joint effort of the Office of the Attorney General and the Weld Administration to address pervasive environmental violations at state facilities in a comprehensive, systemic manner. Executive Order 350, issued in February, 1993, directs the Commonwealth agencies to identify and correct their environmental problems. All "priority" Clean State matters were required to be corrected by June 30, 1997 and all other matters must be remediated by June 30, 2000. This report discusses the progress made in Fiscal Year 1998 to address the Commonwealth's environmental problems, the areas in which the program fell short, and the steps that need to be taken for the program ultimately to succeed.



Respectfully submitted,

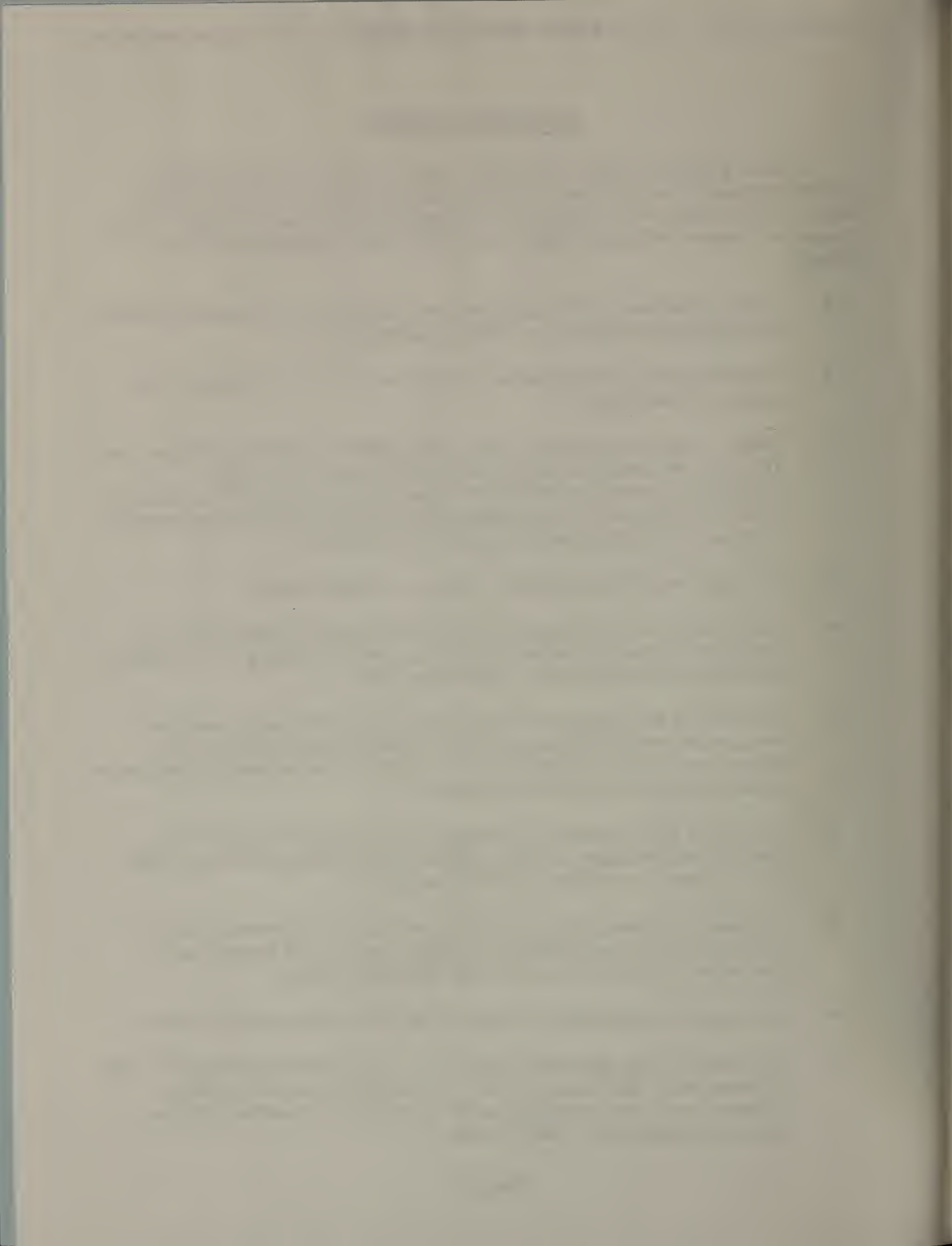


Scott Harshbarger
Attorney General

INTRODUCTION

In issuing my 1997 Clean State report, I hoped that the lessons learned and momentum gained from addressing the priority matters, particularly in the last few months of Fiscal Year 1997, would carry over to the matters still to be resolved. Instead, progress on a number of fronts in Fiscal Year 1998 has been disappointing. These include:

- ❖ over my objection, EOEa reclassified some 65 priority matters as nonpriorities and the majority have not yet been permanently resolved;
- ❖ once the priority deadline passed, no new system or criteria for prioritizing matters was developed;
- ❖ there has been an explosion of new matters added to Clean State (exclusive of the still to be completed audits) and the list has grown from 1000 “nonpriority” matters in 1993 to 1600 matters today due to DEP inspections, efforts by EOEa to list noncompliant USTs and numerous additional matters being added by the agencies and authorities themselves;
- ❖ this year alone, 442 matters were added to the Clean State list;
- ❖ many sites are out of compliance with oil and hazardous material clean up regulations, progress on asbestos abatement projects is lagging and a number of environmental problems still require assessments;
- ❖ the Office of the Attorney General initiated enforcement actions and is in negotiations with the Massachusetts Bay Transportation Authority, the Massachusetts National Guard, and University of Massachusetts at Amherst to secure compliance on a number of matters;
- ❖ with only a few exceptions, long-range planning has not taken place and agencies and authorities have not adopted specific action plans for resolving their problems by the Fiscal Year 2000 deadline;
- ❖ professional auditing, which comes extremely late in the program, is likely to add hundreds of new problems to the Clean State list and agencies and authorities will have little time to deal with these problems;
- ❖ funding must be identified to correct the problems uncovered in the audits;
- ❖ the failure by many agencies to respond to a request by the Executive Office of Administration and Finance (“A&F”) last summer for cost and spending information on their remaining matters resulted in a detailed funding plan only being developed by A&F last month;



- ❖ A&F estimates that \$8 million in additional funding is needed for state USTs to meet regulatory requirements by the end of 1998 and another \$59 million is required to correct all other previously-identified matters; and
- ❖ most agencies and authorities still need to make infrastructure changes and develop environmental management systems that will enable them to stay in compliance with the environmental laws in the future.

On the plus side this year:

- ❖ substantial progress was made to bring the Commonwealth's underground storage tanks ("USTs") into compliance -- scores of USTs were removed from the ground or upgraded with leak detection and spill prevention equipment;
- ❖ tightness testing that was performed on hundreds of state-owned USTs at my urging, resulted in at least 39 USTs that failed the testing being removed;
- ❖ because the costs of cleaning up UST contamination can be enormous, discovering these leaks sooner rather than later has saved the Commonwealth substantial amounts of money;
- ❖ 352 matters were resolved and removed from the Clean State list--while many of these matters were relatively inexpensive to correct such as plugging floor drains and installing cross-connections on plumbing to prevent contamination, these measures protect public health and the environment;
- ❖ agencies and authorities met most of conditions in the administrative consent orders entered into this year on priority matters; and
- ❖ professional environmental auditing of 1000 Commonwealth facilities has finally begun.

This report details the background of Clean State and examines compliance with the June, 1997 priority deadline. It then discusses the progress made on USTs, the tightness testing conducted last fall and the work that still must be done to bring USTs into compliance before the end of this year. With respect to the other matters, the report examines the areas where progress is not being made, the rash of new matters, the failure to put matters on the list at all, and the auditing that is now taking place. Funding of Clean State problems and the delay this year in developing cost estimates and matching them with existing funding is also discussed. Lastly, the report discusses the importance of making infrastructure changes and developing environmental management systems in order to ensure that once agencies and authorities achieve environmental compliance, they remain there. This report should be read in conjunction with my June 1997 and December 1995 Clean State Reports (the "1997 and 1995 Reports"), which evaluated progress under the program and made recommendations to improve its effectiveness.

CLEAN STATE BACKGROUND

Clean State is premised on the belief that the Commonwealth, no less than the private sector, has an obligation to obey environmental laws. When Governor Weld promulgated Executive Order 350 in February, 1993, it was clear that Massachusetts was failing to live up to this obligation. The order directed secretariats, and encouraged the authorities, to identify, prioritize and remediate environmental problems expeditiously at their facilities.

The initial identification of matters was conducted by the agencies and authorities themselves. For planning purposes, they were required to classify their matters as either "priority" or "nonpriority." The "priority" designation was intended for the most serious problems that should be addressed as soon as possible. Some 330 problems were originally classified as priorities because they were determined to present a danger to the public health, were close to environmentally-sensitive areas, or were located in low income neighborhoods, many of which bear a disproportionate share of environmental and health risks.

Executive Order 350 created the Clean State Council ('the Council'), which is composed of a representative from each secretariat and is chaired by the Secretary of EOEA. The Council set an interim deadline of June 30, 1997, for the remediation of all priority matters and a deadline of June 30, 2000, by which all other matters must be corrected. Further investigations eliminated a number of the priority matters as actual problems and 267 matters were confirmed as priorities. Phase I of Clean State was intended to address the priority matters by the June 1997 interim deadline and funding for these matters was given precedence over funding for the nonpriority matters.

It was anticipated that Phase II, the remediation of all other matters, would take place between Fiscal Year 1998 and the end of Fiscal Year 2000. About 1000 matters originally comprised the nonpriority list. Although a large number of these initial matters were ruled out as actual problems, today, as problems continue to be discovered, the number of existing Clean State matters has grown to over 1600. The nonpriority matters, notwithstanding the label, involve significant violations in all areas of environmental regulation.

Each matter is assigned a Clean State number for tracking purposes and entered into the Clean State electronic database. Agencies and authorities must report on the progress of each matter every 90 days ("quarterly reports"). Pursuant to the executive order, which envisions active oversight and monitoring of progress by the Attorney General, copies of the quarterly reports are provided to this office at the close of each quarter.

Clean State does not operate to immunize agencies and authorities from enforcement activities. The Office of the Attorney General continues to exercise its enforcement discretion with respect to Clean State violations and takes formal and informal enforcement action when warranted. The Department of Environmental Protection ("DEP"), which plays a key role in Clean State, reviews and comments on individual matters and makes recommendations to the Secretary of EOEA for removing matters from the Clean State list. DEP also has required agencies and authorities to enter in administrative consent orders ("ACOS") on Clean State matters when appropriate.

COMPLIANCE WITH THE JUNE, 1997 INTERIM DEADLINE

Reclassifying Priority Matters In Lieu of Permanent Resolution

At the end of April, 1997, 102 of the 267 priority matters still remained. As the June, 1997 priority deadline loomed, EOEa, on DEP's recommendation, reclassified some 65 priority matters as nonpriorities because the matters had achieved short-term compliance, were in compliance with DEP ACOs or were sites involving releases of oil or hazardous materials that were in compliance with G.L. c. 21E ("c. 21E") regulations. Regardless of their technical compliance with the environmental laws, all of these matters required further action and permanent solutions or remediation.

As I stated in the 1997 Report, I believe that it is inappropriate to downgrade these matters. My objections stem from concerns that the Clean State ranking system was created in order to prioritize where resources would first be spent. It is difficult to reconcile reclassifying them as nonpriorities, particularly where no other matters have been given higher priority as a result. Since the vast majority of these downgraded matters still exist today, the predictable result of reclassifying them was to dilute the focus on them.

The priority c.21E matters that were downgraded involve serious contamination to soil and groundwater. These matters, which now are in various stages of evaluation under the c. 21E regulations, are really priority matters that are now on track, rather than nonpriorities. The matters will require substantial expenditures as they enter the more costly remediation stages and their re-labeling as nonpriorities puts them at risk of not receiving the prompt attention that they still deserve.

Additionally, agencies should not have until the year 2000 to construct long-range solutions to their priority problems for which stop-gap measures have achieved only temporary compliance. For example, MCI-Plymouth and Cape Cod Community College still do not have permanent solutions to their wastewater problems. Cape Cod Community College is preventing effluent breakouts only through careful water conservation measures. MCI-Plymouth has restricted its inmate population and water usage. Since neither institution plans to continue indefinitely under the *status quo*, ultimately, these are issues that must be addressed in a permanent fashion.

Failure to Remediate Seven of the Dirty Dozen

Looking at this from another perspective, of the 12 sites ("dirty dozen") that DEP identified in 1996 as of significant environmental concern such that their remediation should be particularly encouraged, only 5 matters at these sites have been fully addressed. In the past fiscal year, of the eleven remaining dirty dozen sites, three have been addressed and one is well on the way toward being corrected: Massachusetts Highway Department ("MHD") resolved its c. 21E problems for a gas station in

Barnstable; a sewer line was installed at Department of Environmental Management's ("DEM") Mt. Sugarloaf Reservation; USTs were removed at Worcester State Hospital by Department of Mental Health ("DMH"); construction of MCI-Norfolk's new sewer pipeline is on schedule with an ACO, and will be completed in October, 1998; and discharges from its power plant have been eliminated and a soil assessment is ongoing. However, four c. 21E matters on DEP's list still require major cleanups: Massachusetts Bay Transportation Authority's ("MBTA") Fellsway Bus Garage and Cabot Yard, Metropolitan District Commission's ("MDC") Indian Line Farm, and MHD's Rowley Depot. Notwithstanding the discovery of c. 21E hazardous contamination in the course of closing the wastewater treatment system at Lakeville State Hospital, this matter was taken off the priority list. DEM has yet to develop a new water supply at Horseneck Beach State Reservation in Westport and it is spending over \$100,000 a year to truck wastewater from a tight tank at Mount Greylock Reservation off-site for disposal. DEM's quarterly reports for these matters do not contest that it is feasible to devise permanent solutions to these problems.

Remains of the Dirty Dozen

G.L. c. 21 E Sites:

MBTA, Fellsway Bus Garage and Cabot Yard

MDC, Indian Line Farm

MHD, Rowley Depot

DCPO, Lakeville State Hospital

Public Water Supply:

Horseneck Beach Reservation

Septic System:

Mount Greylock Reservation

Sewer Pipeline and Power

Plant Discharges:

MCI-Norfolk

Failure to Meet the Deadline--and the Subsequent Administrative Orders

Even accepting compliance with c. 21E regulatory time lines and temporary compliance as benchmarks for removing matters from the priority list, 30 matters that were placed on the priority list in 1993, failed to achieve compliance by the June, 1997 deadline. Of these 30, DEP and agencies entered into ACOs for 22 priority matters in May and June, 1997 and the Office of the State Fire Marshal issued notices of violation for the eight other priority underground storage tank ("UST") matters that did not meet the deadline. It appears that all of the priority UST violations have now been corrected.

In the 1997 Report, I made it clear that if matters were being removed from the priority list because they were now the subject of ACOs, this office expected agencies and authorities to adhere strictly to ACO deadlines. That is why this office took enforcement action against the Massachusetts National Guard ("MNG") for alleged violations of its ACO and the Massachusetts Safe Drinking Water Act, G.L. c.111, §160. Pursuant to the ACO that MNG entered into in June, 1997, MNG was required to acquire control of a portion of the land comprising the protective radius ("Zone I") around its primary drinking water well at the Massachusetts Military Reservation on Cape Cod by January 1, 1998. In a settlement soon to be concluded with this office, MNG has now agreed to take all necessary steps to acquire control of the Zone I and to restrict the daily withdrawal rate from the well until the Zone I is acquired. MNG filed a bill in April, 1998, which is presently pending before the Legislature, that authorizes the Commissioner of DCPO to acquire control of the Zone I for the Military Division.

Three other agencies that entered into ACOs with DEP because matters did not meet the June deadline, also violated the ACOs this past year. First, MDC missed an October 1, 1997, deadline for capping and closing Unquity Dump in Milton. While 90% of the capping activities were complete in September, 1997, MDC requested an extension due to contractor problems and bad weather. MDC completed repairs to the cap and seeding by June 30, 1998, in accordance with an amended ACO. Second, the Department of Mental Retardation ("DMR") failed to close a sludge landfill at Wrentham State School by August 28, 1997, because of delays in funding. DMR finally capped and loamed the landfill after funding was restored, but it did not complete the hydroseeding until this spring. DEP assessed \$7,800 in penalties, but suspended payment provided DMR completed the closure by May 30, 1998. Third, according to DEP, Department of Correction ("DOC") failed to meet one deadline at MCI-Norfolk for testing floor drains. DEP assessed a stipulated penalty of \$1500 against DOC for this ACO violation and the testing has now been done.

Agencies and authorities made a concerted effort to meet the June 30 interim deadline in the two months preceding it and I commend these efforts. However, I am concerned that they waited until the eleventh hour to address so many of their matters: 102 of the 267 priority matters remained at the end of April, 1997, and close to one-third of the agencies' total funds for priority matters were scheduled to be spent in the last two months of Fiscal Year 1997. Since many of these matters could have been addressed earlier, this suggests that agencies did not, as required by Executive Order 350, move as expeditiously as possible to remediate these matters.

Lessons Learned From Priority Matters

A number of lessons can be learned from the experience with the priority matters that should be applied to the remaining matters. One reason that a number of matters were not resolved by the interim deadline was because assessments began too late and problems were then found to be of a greater magnitude or different character than originally anticipated. Contamination was found at a number of sites where leaking USTs were not removed until shortly before the deadline, thereby requiring remediation under c. 21E. In order not to delay the ultimate remediation of problems, assessments should go forward now for the remaining matters. For instance, DCPO should begin to assess a solid waste dump at Rutland Heights Hospital that was first identified as a problem in early 1996, and DEM still needs to assess a number of septic systems throughout the Commonwealth. MDC is still reporting that before it can begin to rule out or address eight of its matters, all but two of which are at least a year old, it needs more information. It is critical to conduct assessments now in order to enable agencies to obtain accurate cost estimates for these matters and to budget the amount of time required for remediation. Second, stop-gap measures cannot substitute for permanent solutions and planning for long-term solutions should now be underway now. Third, when ACOs are entered into, agencies and authorities should vigorously adhere to ACO conditions. Fourth, long-range planning for addressing the remaining matters over the next two years is essential. Planning will alleviate the last minute crunch experienced with respect to the priority matters.

STATUS OF OTHER MATTERS

Even assuming that the original priority-nonpriority classifications were accurate, the nonpriority matters are still very important. These matters include many significant air and water pollution issues, c. 21E matters, and wetlands, solid waste, asbestos, UST and hazardous waste violations. The nonpriority label is in some ways a misnomer, particularly as to (1) matters that were taken off the priority list without being resolved and (2) new, serious matters that did not appear on the original Clean State list at all and therefore were never considered for priority status. EOEa should have created a new system to prioritize matters once the June, 1997 deadline expired. It must develop a new priority system now based on new criteria that will include both old and new priority matters. Lastly, it is not clear why agencies designated some USTs as priorities and others as nonpriorities, since prioritization did not appear to correlate with whether a UST was at high risk of leaking. While many USTs have been addressed, this highlights the need for more careful consideration in classifying matters.

Progress On Underground Storage Tanks

A very important success story in the last year involved UST matters. Deteriorating USTs are a serious and widespread problem in the Commonwealth. Leaking USTs cause soil and groundwater contamination, and the costs of cleaning up this contamination can be astronomical. In one case that this office handled, the cost of remedying the contamination caused by the release of gasoline from a single leaking UST was about \$3 million. The Commonwealth's aging USTs, many of which are made of bare steel and do not have corrosion control equipment, are at serious risk of leaking. These ticking time bombs can cause significant damage to the environment.

That is why, in my 1995 Report, I emphasized the importance of testing the Commonwealth's USTs for structural integrity. While tightness testing cannot prevent USTs from leaking, it can determine whether a tank is in fact leaking so that it can be promptly drained and removed from the ground. Tightness testing is a low cost preventive measure that protects both the environment and the public fisc.

An investigation by the Office of the Attorney General last year, with assistance from the Department of Fire Services ("DFS"), revealed that most Commonwealth USTs had not been tightness tested in the recent past; many had apparently never been tested. The state's own regulations require that most older USTs be tested for tightness periodically until the end of 1998 on a schedule of every one or five years, depending on the degree of leak protection and corrosion control equipment installed.

Because tightness testing is critically important, I sent letters to every agency and authority detailing the results of the investigation and reiterating my 1995 recommendation that USTs be tested for tightness. My letters urged each agency and authority to test not only those USTs that regulations require to be tested but also, because it clearly makes good sense to do so, to go beyond the regulations and to test all of their USTs for tightness.

In response, the Council set a deadline of November 30, 1997 for tightness testing all USTs that were not equipped with leak detection and EOEA developed a state-wide contract for the testing. EOEA Secretary Coxe informed me on December 3, 1997, that 316 USTs had been tested and another 117 were scheduled to be tested prior to November 30. Some 44 regulated USTs and 45 unregulated "consumptive use" tanks --a UST whose contents are used at the tank's location, such as heating oil USTs-- at a number of agencies failed to meet the testing deadline, including Bureau of State Office Buildings, DOC, DEM, MDC, Department of Public Health ("DPH"), University of Massachusetts at Amherst ("UMass Amherst"), University of Massachusetts Medical Center in Worcester and State Police. In addition, recent auditing by MBTA found a half-dozen USTs that were not tightness tested last year. This office has requested that MBTA perform the testing immediately or have the tanks drained.

Leaking USTs cause soil and groundwater contamination, and the costs of cleaning up this contamination can be astronomical.

In a few cases, there were good reasons why USTs could not be tested: a State Police UST is evidence in a helicopter crash case and several DEM USTs are located on sensitive archeological sites. However, I concur with Secretary Coxe that most of the USTs should have been tested by the deadline. Clearly, some facilities failed to learn from their "down-to-the wire" experience on the priority matters and waited too long to schedule the testing. The need for this is reinforced by the problems some agencies encountered once they belatedly began the testing.

This office notified UMass Amherst of its intent to take enforcement action because UMass Amherst failed to test 20 USTs by the deadline. DFS also issued notices of violation to UMass Amherst for its USTs. As a result, UMass Amherst completed tightness testing of its USTs by the end of January, 1998.

Roughly 39 USTs, including 19 DOC tanks, failed the tightness testing last year. While the majority of these sites now require remediation under c. 21E regulations, there is no question that discovering the need for remediation sooner rather than later has saved the Commonwealth a substantial amount of money.

Both my investigation and a UST survey conducted by EOEA in the spring of 1997, revealed that scores of state-owned USTs have been abandoned and need to be removed. State regulations require abandoned USTs to be removed within six months of being taken out of service. Additionally, under state and federal regulations, approximately 500 state-owned USTs are required to be upgraded with leak detection and spill prevention before December 22, 1998, or they also must be removed from the ground. In my June, 1997 letters, I urged the agencies and authorities to drain and remove abandoned tanks and to plan now to bring their USTs into compliance by the end of 1998. If agencies and authorities maintain their focus, the prospects for achieving compliance with the regulations by the end of the year appear good.

All abandoned agency USTs have now been drained with the exception of one at Bridgewater Correctional Complex that DEP did not require to be drained. These abandoned tanks must be removed at the very latest by December 22, 1998. As part of our initiative against USTs last year, this office took enforcement action against several private owners of abandoned tanks, as well as against the Department of Public Safety for abandoned USTs at 1010 Commonwealth Avenue, Brookline. As a result, the USTs at issue were removed from the ground.

Because EOEa and the Office of the Attorney General made USTs a top priority in Fiscal Year 1998, agencies and authorities overall made substantial progress on their UST matters. The Massachusetts Turnpike Authority upgraded many of its USTs and MDC and DEM removed numerous abandoned and noncompliant USTs. MHD, after a delay this spring, appears to be on track for upgrading or removing its USTs by the December deadline and plans to spend \$9.5 million in Fiscal Year 1999 to come into compliance. The Massachusetts Port Authority ("Massport"), which adopted a tank management program almost a decade ago, reports that with one exception, all of its 260 active USTs have been brought up to date. MBTA estimates that 70% of its 157 USTs will require some degree of upgrading. It has \$3.2 million in funding available for the upgrades and expects to meet the December, 1998 deadline. Other agencies, however, will have difficulty meeting this deadline. Executive Office of Public Safety ("EOPS") and Executive Office of Health and Human Services ("EOHHS") do not have \$4.6 million and \$3 million, respectively, in funding that is needed to bring their USTs into compliance. As noted below, I have actively supported this funding. In conclusion, while substantial UST work remains to be done before the end of this year, the progress in bringing the Commonwealth's USTs into compliance was definitely the bright spot in this fifth year of Clean State.

Progress On Non-UST Matters

In addition to the progress made on USTs during Fiscal Year 1998, agencies and authorities resolved a number of other environmental issues. However, despite individual success stories, I am concerned about the lack of progress on a number of other fronts this year including asbestos problems, c. 21E matters, solid waste assessments and wetland remediation. As discussed later in this report, the lack of an accurate funding plan in the past year for the agencies' remaining Clean State matters and the late auditing that is turning up hundreds of new matters, are also of major concern.

This fiscal year, DPH completed work at four landfills at Western Massachusetts Hospital in Westfield; DCPO investigated electrical equipment for polychlorinated biphenyls ("PCBs") at a number of facilities; MHD, pursuant to an ACO, addressed numerous hazardous waste management issues at its facilities; and a number of facilities halted discharges from floor drains and installed cross-connections in their plumbing to prevent contamination of potable water. Based on DEP's recommendations, EOEa removed a total of 352 resolved matters from the Clean State list in Fiscal Year 1998. While many of these matters, such as plugging floor drains and installing cross-connections were relatively inexpensive matters to fix, their correction reduces threats to public health and the environment.

a. 21E sites

Many sites are currently out of compliance with c. 21E oil and hazardous material regulations. These regulations, which require sites to be classified according to their severity, set assessment and cleanup deadlines. Sites that are currently out of compliance include: the State Police Barracks in Foxborough, which reports that a lack of funding has prevented it from classifying the site with DEP for several years; DPH's Massachusetts Hospital School in Canton, which apparently missed an April, 1997 date to classify the site; and MDC's Stony Brook Central Services Garage, which was required to be remediated in 1995. At least 14 sites appear to be out of compliance with c. 21E regulations. At two sites, MCI-Cedar Junction and MCI-Framingham, DOC for several years has failed to determine whether releases of gasoline and fuel oil must be reported to DEP and whether the sites must be remediated under c. 21E regulations. All of these delays will postpone the ultimate remediation of these sites and raise the possibility that remediation costs will increase substantially.

b. Asbestos

Despite the health risks posed by exposure to friable asbestos, a number of asbestos matters have shown little progress and many projects are still unfunded. Holyoke Soldiers Home reports that although its asbestos is becoming more friable, it does not have the \$1 million necessary to remove it. There has been no progress for several years on asbestos issues at DMH's Medfield State Hospital, Taunton State Hospital and Massachusetts Mental Health Center in Boston. Only two of eight EOHHS asbestos remediation projects are currently funded: Lemuel Shattuck Hospital and Massachusetts Hospital School -- each in the amount of \$40,000. EOHHS estimates that six of its asbestos projects will each cost \$40,000. Assuming that these are accurate estimates, EOHHS agencies should begin to address these matters now since agencies are expected to correct Clean State problems costing less than \$50,000 from operating budget funds. Funding also still needs to be identified to remedy the remaining asbestos problems at Westboro State Hospital, which are estimated to cost close to \$2 million.

MDC has many asbestos matters for which it has reported "no progress due to lack of funding" for many quarters. There has also been no progress on asbestos issues at MCI-Cedar Junction and MCI-Bridgewater. Despite reporting in 1996 that two barrels of asbestos at Shawme-Crowell State Forest are open and rusting and need to be removed as soon as possible, DEM still has not removed the barrels even though the most recent A&F Clean State funding plan shows that \$40,000 is available to remove these barrels. The asbestos problem at the Saltonstall Building in Boston does not even appear on the Clean State list because according to EOEA, no violation of the air regulations exist. Notwithstanding this, the administration plans to relocate state workers and to spend \$100 million remediating the building's asbestos and other infrastructure problems.

Wherever there is any risk of exposure to friable asbestos by patients, residents, employees or inmates, top priority should be given to remediation.

Wherever there is any risk of exposure to friable asbestos by patients, residents, employees or inmates, top priority should be given to remediation. Facilities that have not yet had a hazard assessment of their asbestos performed should do so immediately.

c. Other deficiencies

Other matters are already at serious risk of not meeting the June, 2000 deadline because assessments started too late or have yet to begin. MHD has a number of wetland matters, including wetland issues in Lakeville, Middleboro and Stoughton, on which design work is not even slated to begin until the first quarter of 2000 and actual construction will not begin until the fourth quarter of 2000. Thirteen MHD solid waste dumps, which are now at least in the assessment stage, are unlikely to be completed by June, 2000 if closure is required pursuant to DEP's landfill closure regulations.

...unless a strategy for achieving compliance in the year 2000 is adopted now by every agency and authority, it is highly unlikely that the deadline will be met.

Many agencies are still not applying lessons learned from a DEP inspection of one facility to other facilities under their control. For example, DEP inspections last summer at a number of DEM facilities showed similar G.L. c. 21C hazardous waste management issues. DEP also found similar air and hazardous waste violations at seven MDC facilities last year. Rather than wait until DEP inspections or auditing reveal the same kinds of problems over and over again, agencies and authorities should take the information gathered from one inspection and apply it to its similar facilities.

Some agencies and authorities, including the Military Division, State Police, Division of Fisheries, Wildlife and Environmental Law Enforcement, Massport and some of the colleges, failed without explanation to submit quarterly progress reports to EOEA for the quarter ending April 30, 1998. This not only hampers oversight of Clean State by the Office of the Attorney General pursuant to Executive Order 350, but it also may evidence a general lack of commitment and progress by these agencies and facilities. Agencies and authorities have an obligation to report every 90 days on each of their matters and to add to the list all new matters discovered during this time period.

With only two years and two construction seasons remaining before Clean State is slated to be completed, few agencies or authorities have mapped out how they will resolve their remaining matters. I cannot stress enough the need for comprehensive planning: unless a strategy for achieving compliance in the year 2000 is adopted now by every agency and authority, it is highly unlikely that the deadline will be met.

The Explosion Of New Matters

The number of Clean State matters continues to increase. In 1993, there were approximately 1000 nonpriority matters. Last year there were about 1500 matters remaining after the June interim deadline and today there are 1600 matters. Auditing, DEP inspections, and the push to list noncompliant USTs have resulted in hundreds of new matters being added to the Clean State list. In Fiscal Year 1998, while 352 existing matters were delisted, 442 new matters involving a whole host of environmental issues, have been added. Most of the matters added to Clean State in Fiscal Year 1998 were already existing problems. These included 173 UST matters added by EOEA itself, another 46 violations discovered during DEP inspections and numerous additional matters discovered by the agencies and authorities themselves.

The Failure To List Matters

There have been a number of unexplained failures by agencies and authorities to list serious environmental problems in the Clean State database. These include South Bay Incinerator in Roxbury, MBTA's former South Boston Power Plant, and DOC's sewer pipeline in Norfolk. The failure to put a number of known matters on the list casts serious doubt on the accuracy of the list. Without the efforts of this office and DEP, it is highly unlikely that these very serious and costly environmental problems would have made their way onto the Clean State list.

The former South Bay Incinerator, with asbestos, solid waste and c. 21E problems, ostensibly was not listed because it was an "orphan" site for which no one agency claimed responsibility. DCPO eventually accepted responsibility for it and the facility, whose twin stacks were a familiar sight from the Southeast Expressway, is now being demolished. This highlights the need to ensure that other sites are not omitted from the list because of uncertainty over which agency bears responsibility for it.

Inexplicably, MBTA failed to list asbestos, hazardous waste and c. 21E problems at its former South Boston Power Plant. Enforcement action by my office in concert with DEP has resulted in the MBTA securing the site, removing corroded drums, transformers and asbestos piping, pumping out oily sludge, and taking immediate measures to prevent large quantities of friable asbestos from being released into the air. The MBTA has also agreed to develop a plan to abate the asbestos that covers virtually every surface inside this massive building.

DOC evaluated its failing sewer line in Norfolk and added the problem to the Clean State list only after this office intervened following repeated spills of raw sewage into a lake. Replacement of the pipeline is now underway and should be complete in October, 1998. The absence of these "sleeping giants" from the list graphically underscores the importance of independent auditing of state facilities, as discussed below.

Audits

Because it was evident early in the program that the original self-assessments by the agencies and authorities of their environmental problems were flawed, I urged them in my 1995 Report to conduct independent environmental auditing of their facilities. This secondary examination is necessary in order to ensure that the universe of Clean State problems has been identified. Following up on this suggestion, Governor Weld issued a directive in January, 1997, requiring all agencies to have professionals conduct environmental audits of their facilities.

One year later, in early 1998, EOEA began its audit program under which agencies and authorities were required to audit 25% of their facilities and to submit audit reports with action plans for resolving the violations identified in the audits, to EOEA by June 30, 1998. The remaining three-quarters of the audits and action plans must be completed and submitted by December 31, 1998. The audits of 1000 facilities are being conducted under state-wide contracts managed by the Operational Services Division. EOAF estimates that audits will cost between \$5,000 and \$20,000 per facility.

While *late* is better than *never*, I am concerned that the requested auditing comes so late in the life of the program. Agencies and authorities will have less than two years to resolve the hundreds of "new" matters that will be added to the Clean State list as a result of the audits.

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It was recently brought to my attention that the audit checklist developed by EOEA for these audits calls only for whether the facility "has been *reviewed under*" each of the environmental regulations on the checklist and not whether the facility is in fact *in compliance* with the regulation. There is a critical difference between stating that a facility has been reviewed under a regulation and stating that it is in compliance. This sleight of hand is not in the spirit of the audits and is contrary to the public interest. I encourage EOEA to change the checklist language for the remaining 75% of the audits.

Some 229 audits, the first 25%, were completed on time. EOEA agreed to provide copies of the audit reports to this office promptly upon receipt. I am concerned that EOEA has only provided about 35 reports to date despite numerous requests by my office and assurances from EOEA that the reports would be provided now. Rather than allow EOEA's unexplained withholding of most of the audit materials to delay this report, my comments will focus on MBTA's audit reports, which were directly provided to this office by the MBTA following a public records request, and general observations about the audits.

From what little this office has been able to see at this point, the audits have uncovered a number of significant problems. MBTA's audits of 27 facilities in this first round of auditing revealed similar violations across the board at its maintenance facilities. For example, there are hazardous waste violations, unpermitted discharges to ground and surface waters, sewer permit discharge violations, and air issues at numerous MBTA facilities. Overall, the MBTA audits conducted so far found 402 additional matters -- 245 actual confirmed problems and 157 matters that require further investigation.

Based on MBTA's experience and initial reports of the problems being found at several other agencies, it is apparent that the same types of violations are occurring at similar facilities. I urge agencies and authorities to take the information learned in these initial audits and apply it to their other facilities rather than wait for audits to identify the same problems repeatedly. This will allow agencies to begin addressing certain systemic issues now and may result in significant cost savings since economies of scale can be achieved in addressing similar problems together.

The MBTA audit reports reveal several additional problems, some of which are likely to be common to other agencies. First, although most of the audits were conducted in the fall and winter of 1997, MBTA was slow to review the audit findings and add the new matters to the Clean State database. Second, many areas of the facilities were not available to the auditors and will require follow-up visits. For example, at Arborway Yard in Jamaica Plain, which is now largely inactive, many important areas were inaccessible including the incinerator room and the maintenance bays. The auditor did not enter other areas because "they may pose a safety hazard to those entering." At many facilities, locked trailers and sheds could not be inspected. Lastly, because MBTA failed to maintain sampling records and analyses of sewer discharges at its Cabot Yard, the audit failed to identify sewer discharge violations that were not only known to the MWRA, but already referred to this office for enforcement.

If a facility is audited this summer or fall, agencies should not have until December 31, 1998, to submit the audit report and corrective action plan to EOEA. The program cannot afford a four-month lag time between discovery of a matter and its listing and development of corrective action plans. I am concerned that this time frame sends the wrong message to the agencies and authorities regarding their obligation to address matters expeditiously and will be misinterpreted as establishing some sort of "safe harbor." Agencies should be required to provide audit reports and action plans to EOEA within three weeks of receipt of the auditor's report and to enter matters promptly in the Clean State database.

As I stated in my 1997 Report, if audits identify violations that should have been identified long ago, I expect agencies and authorities to deal with these matters in a short period of time and well in advance of the end of Fiscal Year 2000. No one should view the audits as creating a grace period that excuses an agency's failure to address its problems as expeditiously as possible -- and immediately, if there is a significant risk of harm to public health, safety or the environment.

FUNDING

It was difficult to obtain accurate Clean State funding information from A&F for the remaining matters this year. While this office aggressively sought this information, its efforts met with limited success. Obviously, the remaining matters cannot be resolved without matching accurate cost estimates to available funding sources. It also makes it impossible to develop comprehensive plans for addressing the remaining matters.

Many agencies and authorities failed to respond initially to an August, 1997 request from A&F for detailed cost and spending information on their remaining matters. In October, upon learning that a funding plan was not available because the requested information had not been forthcoming, this office requested a meeting with A&F. However, A&F informed us that it was not prepared to meet because it did not have the relevant information and a new director of capital budgeting had just come on board. A&F declined our request for a list of agencies that were delinquent in providing the cost information and gave agencies until November 24, 1997 to submit it. The failure to provide this information in September was a serious breach of agencies' Clean State obligations and it delayed A&F's development of a critical Phase II funding plan for the remaining matters.

When the requested meeting took place on December 3, 1997, A&F provided "draft" preliminary funding information, that to borrow A&F's words, "contained a lot of caveats." A major limitation on A&F's figures was that they did not include projected costs for actually cleaning up c. 21E sites or remediating asbestos problems, both of which will run into the millions of dollars. A&F's draft funding information appeared to identify only about one-half of the funds needed to correct the remaining matters by the end of Fiscal Year 2000. Significantly, much of the identified funding that could be used for Clean State matters was scheduled to expire at the end of Fiscal Year 1998 if it was not spent by the agencies. A&F did not provide funding information on the independent authorities.

Moreover, the draft funding information contained only total cost estimates for each agency. At the December 3rd meeting, my office requested updated information that would match existing capital authorizations with specific Clean State matters and that would include information on the authorities. Despite assurances by A&F that this information would be supplied by mid-January, we did not receive it until June of this year.

The June, 1998 funding plan raises as many questions as it answers. On its face, it does not include spending information on the authorities, nor does it contain any of the new matters identified in the first 25% of the audits. It is unclear whether the ability to spend the

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identified funds will be affected by the annual cap on capital spending. We have requested a follow up meeting with A&F to discuss the funding plan.

A&F estimates that it will cost \$27.5 million to bring the Commonwealth's USTs into compliance and \$137.5 million to remediate all other previously-identified matters. A&F has not identified almost \$8 million needed to fund the UST matters; however, it anticipates that \$3 million of this shortfall will be made up by an EOAF reserve fund. The Administration requested \$8 million for Clean State remediation, with priority to be given to USTs, in a supplemental Fiscal Year 1998 appropriation request filed in June. I recently urged key legislators to support this line item request.

About 40% of the other Clean State matters do not have funding, and close to \$59 million is still needed to address them. While EOEA anticipates a shortage of only \$30,000 to correct its matters that were identified before the recent auditing, other agencies have significant shortfalls. These include: Higher Education/UMass (\$11.6 million); EOAF (\$19.5 million); EOHHS (\$8.5 million); EOPS (\$4.7 million) and MHD (\$14 million). Under the current plan, funding for these matters depends on the passage of the DCPO Bond Bill and a transportation bond bill. I have long supported and repeatedly urged action on the DCPO Bond Bill, which provides \$38 million for Clean State environmental compliance, \$15 million for asbestos removal and \$15 million for asset management, including the removal of environmental hazards.

Another critical problem is that while many of the matters discovered in the initial audits have cost estimates, funding to correct these matters still must be identified. Cost estimates must be matched with funding sources as soon as possible.

In sum, Secretary Coxe's July 31, 1997 statement that "we have developed cost estimates for most nonpriority matters and are identifying existing funding authorizations available to meet those costs[,] " was overly optimistic. The delay of almost one year in providing funding information has undoubtedly resulted in some matters not being addressed in the past year that could have been. It also has prevented agencies from effectively planning how to meet the Fiscal Year 2000 deadline.

THE NEED FOR INSTITUTIONAL CHANGE

Government has an obligation to every citizen of this Commonwealth to act in an environmentally responsible manner. The effort and millions of dollars expended in the Clean State program will be for naught if agencies and authorities do not make organizational changes and develop environmental management systems that will enable them to stay in compliance in the future. Clean State will have been a failure if, a decade from now, the Commonwealth has returned to violating the environmental laws. In 1995, I called for agencies and authorities to make institutional changes and to create the necessary infrastructure to ensure long-term environmental compliance. Many private entities have changed their cultures and become environmental leaders, and I am confident that agencies and authorities can do so also. Some already have begun to make the necessary changes, but others are much further behind.

MHD, which was the subject of enforcement action by DEP and U.S. EPA in 1994, is to a great extent an enforcement success story. Pursuant to its Management Systems Improvement Plan, MHD has made good progress in implementing environmental management activities that will ensure it remains in compliance in the future. An environmental handbook has been developed and is now under review by MHD's Environmental Management Systems Task Force. It has also developed an ongoing self-audit program and designed an environmental tracking system. MHD reports that the Task Force is drafting an environmental management systems document that includes a communication/organizational chart, roles and responsibilities of personnel and corrective action programs. Standard operating procedures have been adopted and will be included in the facility handbook. In March, 1998, MHD's Environmental Improvement Team conducted an executive level awareness training that focused on how MHD will maintain compliance through its daily operations and maintenance activities. The training addressed managers' roles in maintaining compliance and focused on the value of an environmental management system from a business perspective. MHD also created a pollution prevention team. These are the kinds of steps that every agency must begin to take.

Other agencies and authorities making progress are DEM, MBTA, and DOC. Massport has had a compliance and pollution prevention audit program in effect for a number of years. With the aid of Office of Technical Assistance, DEM is completing a pilot analysis that is intended to identify the gaps between what it is doing and what it should be doing environmentally. EOEA hopes that the information gained in the analysis will be transferrable to other agencies. MBTA is in the process of increasing its environmental staff and acknowledges the importance of developing its own environmental management system. MBTA also deserves credit for beginning facility audits before the EOEA audit program began. DOC recently began an ISO 14001 (an international standard for environmental management) program at MCI-Norfolk with assistance from U.S. EPA.

I agree wholeheartedly with Secretary Coxe that a "major challenge is to develop environmental management systems within the agencies, in order to prevent new compliance problems from arising." While EOEA planned to provide "detailed guidance" for maintaining compliance, to the agencies, before the end of 1997, EOEA

has not informed my office that this has happened. If it has not, I hope that EOEA will do so shortly. To assist agencies in developing environmental management systems, the Council should set dates by which agencies and authorities are required to conduct environmental systems' reviews and a date by which management systems must be in place.

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CONCLUSION

It will be difficult, but not impossible, to meet the Fiscal Year 2000 deadline of the Clean State program. Agencies and authorities must plan now how best to prioritize and to address their environmental problems in a timely and effective manner, including those just now being discovered. Cost and spending information must be compiled rapidly and accurately. As matters are discovered in the audits, corrective action plans must be developed and the information entered into the Clean State database. Funding requests to correct these matters must be developed quickly, submitted to the Legislature and actively supported.

I commend agencies and authorities for their hard work in addressing hundreds of environmental problems in the past five years. The monies expended and range of problems corrected are clear indicators that the program is succeeding. Clearly much more has been accomplished through the program than individual enforcement actions could ever hope to accomplish.

However, Clean State needs to end. Seven years is more than ample time in which to expect the Commonwealth to put its environmental house in order. Agencies and authorities must step up their efforts to meet the June 30, 2000 deadline and to develop systems to stay in compliance in the future. With renewed commitment, they can still meet this challenge.

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